

TELECONFERENCE WITH EXAMINER

On January 7, 2009, Applicant's attorney and Examiner Nguyen participated in a teleconference regarding the clarification of the Office Action. Specifically, in the Office Action, the Examiner alleges that Species I is directed to Figures 1 to 4 (one lateral wing) and Species II is directed to Figure 5 (two lateral wings). During the teleconference, the Examiner clarified that the Office Action contained errors with respect to the description of the Figures. In particular, the Examiner noted that the Office Action should have described Species I directed to Figures 1 to 4 as having "two lateral wings" and Species II directed to Figure 5 should have been described as having "one lateral wing." Applicants hereby thank the Examiner for the clarification and will respond to the Restriction Requirement based on the clarification by the Examiner.

REMARKS

Claims 2-8, 10, 13-15, 17-23, 26-30, 32 and 42-51 are currently pending.

ELECTION

The Examiner divided the claimed subject matter into two Species based on Figures 1 to 4 and Figure 5, and requires the Applicant to elect one Species for prosecution. The Examiner made no mention of Figure 6. During the teleconference as noted above, the Examiner presented the Species as:

- Species I: drawn to Figures 1 to 4 (two lateral wings); and
- Species II: drawn to Figure 5 (one lateral wing).

Applicant elects with traverse Species I directed to Figures 1 to 4 and contends that Figure 6 which also depicts two lateral wings also falls within Species I. Applicant submits that

pending claims 2-8, 10, 13-15, 17-23, 26-30, 32 and 42-51 at least read on Figures 1 to 4 and Figure 6.

Applicant believes that the election requirement is improper. Applicant respectfully submits that Section 803 of the MPEP states that "there are two criteria for restriction between patentably distinct inventions" as follows:

- (1) The inventions must be independent...; **and**
- (2) There must be a serious burden on the Examiner if restriction is not required....

Applicant traverses the restriction requirement because the pending application and figures was filed *nearly five years ago*. In fact, the claimed subject matter has been examined multiple times dating back to the first Non-Final Office Action issued on May 13, 2005, and no Restriction Requirement was ever issued. Thus, Applicants submit that there is no serious burden on the Examiner to examine the claims and undue diverse searching would not be required, thereby making the restriction requirement improper.

Accordingly, Applicant respectfully requests that the restriction requirement between Species I and Species II be withdrawn.

CONCLUSION

The Examiner is invited to contact the undersigned at (212) 408-2500 if any additional information or assistance is required. Applicant believes that no additional fee is due in connection with filing of this Response. However, if any fee is required, or if any overpayment has been made, Applicant authorizes the Director to charge any fees, or credit or any overpayments made, to Deposit Account 02-4377.

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Respectfully submitted,
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